

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**FOODBRANDS SUPPLY CHAIN
SERVICES, INC., f/k/a NATIONAL
SERVICES CENTER, INC.,**

Plaintiff,

v.

TERRACON, INC.,

Defendant.

CIVIL ACTION

No. 02-2504-CM

MEMORANDUM AND ORDER

This matter comes before the court on defendant Terracon, Inc.'s Motion for Reconsideration and Proposed Findings of Fact and Conclusions of Law Regarding Defendant's *Daubert* Challenge to Plaintiff's Standard of Care Expert Gary Van Riessen (Doc. 361).

Terracon has requested the court to reconsider its order permitting plaintiff Foodbrands Supply Chain Services, Inc.'s expert witness Gary Van Riessen to offer his standard of care opinion at trial. Terracon contends that Mr. Van Riessen's standard of care opinion fails the test for reliability and admissibility set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Fed. R. Civ. P. 702, and should be excluded pursuant to Fed. R. Evid. 403. Foodbrands opposes Terracon's motion and contends that the points Terracon makes in its motion are, for the most part, points that should be used to cross-examine Mr. Van Riessen at trial.

Having reviewed the parties' arguments, the court denies Terracon's motion. After holding a *Daubert* hearing on this and other issues related to expert testimony, the court previously found, within its

discretion, that Mr. Van Riessen's testimony on both the causation and standard of care issues meets the requirements of *Daubert* and of Fed. R. Civ. P. 702. The court found that Mr. Van Riessen's testimony is reliable and is relevant to the issues before the jury.

The court stands by its prior ruling and, again, finds that the issues Terracon has raised go more to the weight to be accorded Mr. Van Riessen's testimony rather than its admissibility. Again, the court notes that Terracon may use vigorous cross-examination and presentation of contrary evidence to attack Mr. Van Riessen's testimony at trial. The court further finds that the probative value of Mr. Van Riessen's testimony is not outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury under Fed. R. Evid. 403. Accordingly, the court denies Terracon's request to exclude Mr. Van Riessen's standard of care opinion.

IT IS THEREFORE ORDERED that defendant Terracon, Inc.'s Motion for Reconsideration and Proposed Findings of Fact and Conclusions of Law Regarding Defendant's *Daubert* Challenge to Plaintiff's Standard of Care Expert Gary Van Riessen (Doc. 361) is denied.

Dated this 3rd day of March 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge